



Office of the Attorney General
State of Texas

June 4, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Sharon Gillespie
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR93-277

Dear Ms. Gillespie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19344.

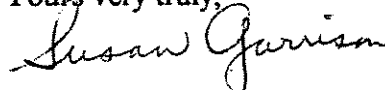
The Texas Department of Banking (the "department") has received a request for information relating to the department's determination on October 30, 1992, that First City Bank was insolvent or imminently insolvent. Specifically, the requestor seeks ten categories of information, including information relating to a certain total asset purchase and assumption study; information relating to the transfer of assets from the First City Banks to the FDIC as receiver and, where applicable, to the New First City Banks; documents generated or relied upon by the department and related to the alleged insolvency or imminent insolvency of any of the First City Banks; documents relating to the write-down of loans or capital at First City Houston, First City Dallas, or any other First City Bank, or the decision to require additional capital or loan loss reserves; documents related to the bid process whereby the assets and liabilities of the New First City Banks were sold or offered to be sold to various bidders; documents relating sales of the assets of the various New First City Banks to the successful bidders; all call reports and profit and loss statements for the First City Banks relied upon by the department or any other agency in making the decision to declare any of the First City Banks insolvent; documents relating to the financial condition of the First City Banks, FCBOT, or FCB Holdings relied upon by the department or any other agency in making the decision to declare any of the First City Banks insolvent; documents relating to any discussions, correspondence, or other communications between the department and any other agency regarding the alleged insolvency of the First City Banks; and documents relating to the computation of any loss incurred by the FDIC or reasonably anticipated by the FDIC in connection with its assessment of First City Banks pursuant to 12 U.S.C. § 1815(e). You advise us that the requested call reports and profit and loss statements have been made available to the requestor. You claim, however, that the remaining information is excepted from required public disclosure by sections 3(a)(1), 3(a)(10), 3(a)(11), and 3(a)(12) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure information deemed confidential by statutory law. Subsection (a) of article 342-210, V.T.C.S., of the Texas Banking Code provides in part that

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank or bank holding company other than call reports and profit and loss statements, whether obtained through examination or otherwise, except published statements, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of said Department.

The requested information is information obtained by the department and it concerns the financial condition of a bank. Article 342-210 deems this information confidential unless it is within one of that provision's exceptions to confidentiality.¹ However, as you advise us that you have released the information that falls within the exceptions to confidentiality expressed in article 342-210, we conclude that the remaining information is confidential and must be withheld under section 3(a)(1) of the Open Records Act pursuant to article 342-210 of the Banking Code. *See Stewart v. McCain*, 575 S.W. 2d 509 (Tex. 1979). Because we conclude that section 3(a)(1) excepts the requested information from disclosure, we need not consider the other arguments you have raised. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/GCK/le

¹Article 342-209 requires the Banking Commissioner to "call upon each state bank four times each year to make and publish a statement of its financial condition." Therefore, information that is part of the bank's financial statement published pursuant to article 342-209 is within the exception to confidentiality in article 342-210 for "call statements." The phrase "profit and loss statement" is not defined by article 342-210 or by any other provision of the Texas Banking Code. In prior rulings of this office, we have interpreted the phrase according to its commonly understood meaning. *See* Gov't Code §§ 311.01, 312.002. The phrase "profit and loss statement" is generally defined as a financial statement "showing the income, costs and expenses of a business over a specific period of time." *See* BLACK'S LAW DICTIONARY 763, 1211 (6th ed. 1990) (defining income statement and profit and loss statement similarly); WEBSTER'S THIRD NEW INT'L DICTIONARY 1143, 1811 (1969) (also defining income statement and profit and loss statement similarly).

Ref.: ID# 19344
ID# 19650
ID# 19706
ID# 19762

Enclosures: submitted documents

cc: Mr. Peter Tierney
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(w/o enclosures)